

SENATE BILL NO. 435

INTRODUCED BY WHEAT, KITZENBERG

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR PROBATE OF A NONDOMICILIARY DECEDENT'S WILL THAT IS FILED AND NOT PROBATED IN A COURT IN THE DOMICILIARY STATE; AMENDING SECTIONS 72-3-203, 72-3-212, AND 72-3-301, MCA; AND PROVIDING AN ~~IMMEDIATE~~ EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Nondomiciliary decedent -- will filed and not probated in domiciliary state. A will of a nondomiciliary decedent that has been filed and not probated in a court in the domiciliary state may be proved for probate in this state by an authenticated certificate of its legal custodian that the copy introduced is a true copy and that the will has been filed and not submitted for probate in the court in the domiciliary state.

Section 2. Section 72-3-203, MCA, is amended to read:

"72-3-203. Probate and appointment under will -- additional information required. (1) An application for informal probate of a will ~~shall~~ must state the following in addition to the statements required by 72-3-202:

(a) that the original of the decedent's last will is in the possession of the court or accompanies the application, ~~or~~ that an authenticated copy of a will probated in another jurisdiction accompanies the application, or that an authenticated copy of a will filed without probate in another jurisdiction and proved, as provided in [section 1], accompanies the application;

(b) that the applicant to the best of ~~his~~ the applicant's knowledge believes the will to have been validly executed;

(c) that after the exercise of reasonable diligence, the applicant is unaware of any instrument revoking the will and that the applicant believes that the instrument ~~which~~ that is the subject of the application is the decedent's last will;

(d) that the time limit for informal probate, as provided in this chapter, has not expired either because

1 3 years or less have passed since the decedent's death or, if more than 3 years from death have passed, that
2 circumstances as described by 72-3-122 authorizing tardy probate have occurred.

3 (2) An application for informal appointment of a personal representative to administer an estate under
4 a will ~~shall~~ must describe the will by date of execution and state the time and place of probate or the pending
5 application or petition for probate. The application for appointment ~~shall~~ must adopt the statements in the
6 application or petition for probate and state the name, address, and priority for appointment of the person whose
7 appointment is sought."

8
9 **Section 3.** Section 72-3-212, MCA, is amended to read:

10 **"72-3-212. Informal probate -- clerk to make findings.** In an informal proceeding for original probate
11 of a will, the clerk shall determine whether:

12 (1) the application is complete;

13 (2) the applicant has made oath or affirmation that the statements contained in the application are true
14 to the best of the applicant's knowledge and belief;

15 (3) the applicant appears from the application to be an interested person as defined in 72-1-103;

16 (4) on the basis of the statements in the application, venue is proper;

17 (5) an original, duly executed, and apparently unrevoked will, authenticated copy of a will probated in
18 another jurisdiction, or an authenticated copy of a will filed without probate in another jurisdiction and proved,
19 as provided in [section 1], is in the clerk's possession;

20 (6) any notice required by 72-3-106 has been given and that the application is not within 72-3-213(5);
21 and

22 (7) it appears from the application that the time limit for original probate has not expired."
23

24 **Section 4.** Section 72-3-301, MCA, is amended to read:

25 **"72-3-301. Petition for formal testacy or appointment -- contents -- last will.** (1) Petitions for formal
26 probate of a will or for adjudication of intestacy with or without request for appointment of a personal
27 representative must be directed to the court, request a judicial order after notice and hearing, and contain further
28 statements as indicated in this section. A petition for formal probate of a will:

29 (a) requests an order as to the testacy of the decedent in relation to a particular instrument ~~which~~ that
30 may or may not have been informally probated and determining the heirs;

(b) contains the statements required for informal applications as stated in ~~the five subsections under~~ 72-3-202; and the statements required by ~~subsections (b) and (c) of 72-3-203(1)(b) and (1)(c);~~ and

(c) states whether the original of the last will of the decedent is in the possession of the court or accompanies the petition. If the original will is ~~neither~~ not in the possession of the court ~~nor accompanies or does~~ not accompany the petition, ~~and if no an~~ an authenticated copy of a will probated in another jurisdiction ~~accompanies~~ does not accompany the petition, or if an authenticated copy of a will filed without probate in another jurisdiction and proved, as provided in [section 1], does not accompany the petition, the petition also must state the contents of the will and indicate that it is lost, destroyed, or otherwise unavailable.

(2) A petition for adjudication of intestacy and appointment of an administrator in intestacy must request a judicial finding and order that the decedent left no will and determining the heirs, contain the statements required by 72-3-202 and 72-3-204, and indicate whether supervised administration is sought. A petition may request an order determining intestacy and heirs without requesting the appointment of an administrator, in which case the statements required by 72-3-204(2) may be omitted."

NEW SECTION. Section 5. Codification instruction. (1) [Section 1] is intended to be codified as an integral part of Title 72, chapter 3, part 2, and the provisions of Title 72, chapter 3, part 2, apply to [section 1].

(2) [Section 1] is intended to be codified as an integral part of Title 72, chapter 3, part 3, and the provisions of Title 72, chapter 3, part 3, apply to [section 1].

NEW SECTION. Section 6. Effective date. [This act] is effective ~~on passage and approval~~ JULY 1, 2005.

NEW SECTION. Section 7. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to the probate of testate ~~nonresident~~ NONDOMICILIARY decedents' estates that have not been closed before [the effective date of this act].

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